IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Revision No.2160 of 2006

DATE OF DECISION: OCTOBER 26, 2006

Tara Singh and another

...PETITIONERS

VERSUS

State of Punjab

...RESPONDENT

CORAM: HON'BLE MR.JUSTICE SATISH KUMAR MITTAL

Present: Mr. N.S.Sodhi, Advocate,
for the petitioners.

...

The accused have filed this criminal revision against the order dated 11.10.2006 passed by the Special Judge, Moga, whereby the application filed by the prosecution under Section 311 Cr.P.C. for summoning HC Piara Singh and HC Pritam Singh as prosecution witnesses, has been allowed.

I have heard the counsel for the petitioners and gone through the impugned order.

In this case, as per the prosecution version, both the petitioners were alleged to have run away from the spot when the alleged recovery of contraband was made. At that time, they were identified by HC Piara Singh and HC Pritam Singh, who were members of the raiding party. Though a reference of both these witnesses has been made in the FIR as well as in the challan filed by the police under Section 173 Cr.P.C., but they were not shown as prosecution witnesses in the list of witnesses filed by the prosecution, therefore, they were not examined. Subsequently, the aforesaid application was filed to examine these two witnesses in additional evidence.

Counsel for the petitioners submitted that neither the statements of the aforesaid two witnesses were recorded under Section 161 Cr.P.C. nor they were named as prosecution witnesses in the list of witnesses filed by the prosecution. Therefore, the Special Judge has committed illegality while allowing the application filed by the prosecution at a belated stage to fill-up the lacuna.

I do not find any substance in the arguments raised by the counsel for the petitioners. In case a witness has not been cited as a prosecution witness in the list of witnesses or his statement has not been recorded under Section 161 Cr.P.C., even then the trial Court has jurisdiction to permit the prosecution to produce the witnesses if those witnesses are material and necessary for just decision of the case. In this case, from the very beginning the prosecution case is that these two witnesses had identified the accused at the time of the alleged occurrence. They have been named in the final report submitted by the investigating agency. Merely because their statements were not recorded under Section 161 Cr.P.C. and they were not cited in the list of prosecution witnesses, their examination as prosecution witnesses cannot be declined and the Special Judge has rightly come to the conclusion that their examination is material and necessary for proper adjudication of the case.

Dismissed.

October 26, 2006 (SATISH KUMAR MITTAL)
vkg JUDGE